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THAT ONE VIDEO ENTERTAINMENT, LLC, a
California limited liability company

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

THAT ONE VIDEO
ENTERTAINMENT, LLC, a
California limited liability company,

Plaintiff,
vs.

KOIL CONTENT CREATION PTY
LTD., an Australian proprietary
limited company doing business as
NOPIXEL; MITCHELL CLOUT, an
individual; and DOES 1-25, inclusive,

Defendants.

CASE NO: 2:23-cv-02687 CAS (JCx)

[Assigned to the Hon. Stephen V. Wilson;
Ctrm 10A]

**DECLARATION OF JACQUE KHALIL
IN SUPPORT OF PLAINTIFF'S MOTION
FOR SUMMARY ADJUDICATION**

*[Motion; Declarations of Daniel Tracey,
William Francis, Benjamin Lau, Esq., and
John Begakis, Esq.; Separate Statement of
Undisputed Fact; and [Proposed] Order filed
concurrently herewith]*

Hearing

Date: September 9, 2024
Time: 1:30 p.m.
Dept.: Courtroom 10A (10th Floor)
350 W. First Street
Los Angeles, CA 90012
Judge: Hon. Stephen V. Wilson

Action Filed: April 10, 2023
Trial Date: September 17, 2024

DECLARATION OF JACQUE KHALIL

I, Jacque Khalil, declare and state as follows:

1. I am an individual currently residing in the County of Los Angeles, State of California, and am over 18 years of age. I hereby submit this Declaration in support of the Motion for Summary Adjudication (the “Motion”) filed by Plaintiff THAT ONE VIDEO ENTERTAINMENT, LLC, a California limited liability company (“Plaintiff”) against Defendants KOIL CONTENT CREATION PTY LTD., an Australian proprietary limited company doing business as NOPIXEL (“NoPixel”) and MITCHELL CLOUT, an individual (“Clout”) (collectively, “Defendants”). I know all of the following facts of my own personal knowledge and, if called upon and sworn as a witness, could and would competently testify thereto.

2. I am the Chief Operating Officer of Plaintiff, a content creation and business management company.

3. On or about October 14, 2021, Plaintiff entered into a written employment agreement with software developer Daniel Tracey, pursuant to which Plaintiff agreed to pay Mr. Tracey a salary of \$105,000 per year, plus bonuses, in exchange for Mr. Tracey’s agreement to be employed full-time in the role of “Lead Developer” (the “Employment Agreement”). In my discussions with Mr. Tracey leading up to the execution of the Employment Agreement, we both understood and agreed that, as part of his employment, Plaintiff would be able to loan out Mr. Tracey’s services as a lead developer to third parties. We also both understood and agreed that, as part of his employment, Mr. Tracey would spend a portion of his employment on the platform Twitch, during which time he would stream development (i.e., coding) and Game related content.

4. Because Mr. Tracey was employed by Plaintiff, but was not an American citizen, Plaintiff agreed to sponsor Mr. Tracey’s H-1B visa application (the “Application”). In the Application, we indicated that Mr. Tracey would not be placed

1 at any worksite controlled by a third-party to whom his services would be loaned out.
2 This was accurate because Mr. Tracey worked remotely for Defendant NoPixel at all
3 times in which Plaintiff loaned out his services to Defendant NoPixel. In the
4 Application, we also indicated that approximately ten percent (10%) of Mr. Tracey's
5 time working for Plaintiff would be dedicated to creating "video tutorials
6 demonstrating software modifying techniques and general media content discussing
7 software modifying strategies for interactive multimedia entertainment productions."
8 This was accurate because, at the time the Application was submitted, I believed Mr.
9 Tracey's streaming activities on Twitch would make up approximately 10% of his
10 time. It was also my understanding that such an approximation could change over
11 time as the circumstances of Mr. Tracey's employment with Plaintiff changed.

12 5. Once Mr. Tracey became an employee, Plaintiff began invoicing
13 Defendant NoPixel for Mr. Tracey's services under the loan-out arrangement, and
14 some of the amounts set forth on those invoices were initially paid to Plaintiff.

15 I declare under penalty of perjury under the laws of the State of California that
16 the foregoing is true and correct, and that this Declaration was executed on August
17 12, 2024, at Los Angeles, California.

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JACQUE KHALIL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a “Notice of Electronic Filing” automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: August 12, 2024

By: /s/ John Begakis
John M. Begakis